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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS A. MAKOWSKI, RAJESH VAIDYA,
DEBORAH E. BRYANT, and BRIAN M. JOHNSON

Appeal 2009-014752
Application 10/602,551
Technology Center 2100

Before ROBERT E. NAPPI, JASON V. MORGAN, and
JULIE K. BROCKETTI, *Administrative Patent Judges*.

BROCKETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Introduction

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 69-92. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

Exemplary Claim

Exemplary independent claim 69 under appeal reads as follows:

> 69. A computer-accessible memory medium that stores program instructions executable by a processor to perform:
>
> displaying a node in a graphical program;
>
> receiving first user input invoking display of a plurality of functions for the node;
>
> displaying the plurality of functions for the node in response to the first user input;
>
> receiving second user input selecting a function from the plurality of functions;
>
> determining graphical program code based on the second user input, wherein the determined graphical program code comprises a graphical representation of an implementation of the selected function, and wherein the determined graphical program code is executable to provide functionality in accordance with the selected function;
>
> associating the determined graphical program code with the node, wherein, when the node in the graphical program executes, the determined graphical program code executes to provide the functionality in accordance with the selected function.

Rejections on Appeal

The Examiner rejected claims 69-92 under 35 U.S.C. § 102(b) as being anticipated by Kudukoli (US 2001/0024211 A1, Sep. 27, 2001).

Appellants' Contentions

(1) Appellants contend that the Examiner erred in rejecting claims 69 and 77 because: "in Kudukoli, there is no *associating* determined code with the New VI Object Reference node." (App. Br. 7).

(i) "[T]he GPG program generates graphical program code for a *new* graphical program, not for itself." (Reply Br. 5). "[A]ny new VI object created by the New VI Object Reference node *belongs to the new graphical program*, and its code is neither associated with the New VI Object Reference node, nor executed when the New VI Object Reference node executes; rather, the new VI object is created by and when the New VI Object Reference node is executed." (App. Br. 8).

(ii) The code of New VI Object Reference node, which creates the specified new VI object at runtime, inherently belongs to the New VI Object Reference node and thus no associating with the node is performed. (*Id.* at 7, 8; Reply Br. 5).

(iii) "[T]he functionality of the New VI Object Reference node that generates the object is *not* the same as the functionality of the generated object." (Reply Br. 8).

(2) Appellants contend that the Examiner erred in rejecting claims 85 and 89 for reasons similar as those contended by Appellants for claims 69 and 77.

(3) Appellants have presented additional arguments directed towards dependent claims 70-76, 78-84, 86-88 and 90-92; however, we do not reach the issues presented by these arguments, as for the reasons stated infra, we reverse the rejection of independent claims 69, 77, 85 and 96.

Issue on Appeal

Did the Examiner err in rejecting claims 69-92 because Kudukoli does not disclose associating the determined graphical program code with the node, wherein, when the node in the graphical program executes, the determined graphical program code executes to provide the functionality in accordance with the selected function?

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments that the Examiner has erred. We agree with Appellants that the Examiner has erred.

Independent claims 69 recites "…associating the determined graphical program code with the node, wherein, when the node in the graphical program executes, the determined graphical program code executes to provide the functionality in accordance with the selected function." Independent claims 77, 85 and 89 recite similar limitations. Thus, the scope of the independent claims includes limitations directed to the node executing the program code to provide the functionality.

The Examiner cites Fig. 4 of Kudukoli as disclosing "when the node in the graphical program executes, the determined graphical program code executes to provide the functionality in accordance with the selected function." (emphasis omitted) (Ans. 14). We disagree with the Examiner's interpretation of the reference. Appellants note, and we agree, that in Kudukoli "the GPG program

generates graphical program code for a *new* graphical program, not for itself." (Reply Br. 5). We find that Kudukoli discloses that the GPG program receives information specifying functionality for a graphical program (or graphical program portion) (See Kudukoli Fig. 4, element 208). Wherein, a user can specify inputs for a New VI Objet. Ref. Node. (*Id.* ¶0213-¶0217). Then the GPG program programmatically generates a graphical program (or graphical program portion) to implement the specified functionality (*Id.*, element 210). We therefore, find that it is this newly generated graphical program, created by the execution of the GPG program, and the code contained within the new program that actually provides the functionality in accordance with the function selected by the user. When the GPG program which contains the New VI Obj. Ref. Node executes, a new VI object with separate code associated with it is generated in a new program. It is the new program and code that, when executed, provides the functionality associated with the user selected function. As such, Kudukoli does not disclose associating the determined graphical program code with the node, wherein, when the node in the graphical program executes, the determined graphical program code executes to provide the functionality in accordance with the selected function.

CONCLUSIONS

(1) Appellants have established that the Examiner erred in rejecting claims 69-92 as being unpatentable under 35 U.S.C. § 102(b).

(2) On this record, claims 69-92 have not been shown to be unpatentable.

DECISION

The Examiner's rejection of claims 69-92 is reversed.

REVERSED

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